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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/521,399

07/08/2005

Gunter Orschulik

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EXAMINER
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HAYES, KRISTEN C

ART UNIT	PAPER NUMBER
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3643

MAIL DATE	DELIVERY MODE
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10/29/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/521,399	Applicant(s) ORSCHULIK, GUNTER	
	Examiner Kristen C. Hayes	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 July 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 January 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>20050114</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The information disclosure statement (IDS) submitted on 14 January 2005 is being considered by the examiner.

### ***Drawings***

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the roof (claim 9), and the hooks on the pot (claims, 5, 17) and holes on the coaster (claims 5, 17) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner,

Art Unit: 3643

the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

3. Claims 2 and 4 recite the limitation "the guide face" in lines 2 and 3, respectively. There is insufficient antecedent basis for this limitation in the claim.
4. Claim 13 recites the limitation "the spacer" in line 2. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
6. Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 recites the limitation: *a water dish is undetachably attached* (line 3). Undetachably attached implies that the connection between the coaster and the pot is permanent. In the specification, the connection is described as detachable but secure (page 7, lines 14-15).
7. Claims 5-15 and 17 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 5 and 17 recite the limitation: *wherein the coupling elements are designed in the form of hooks on one of the pot and the coaster*

Art Unit: 3643

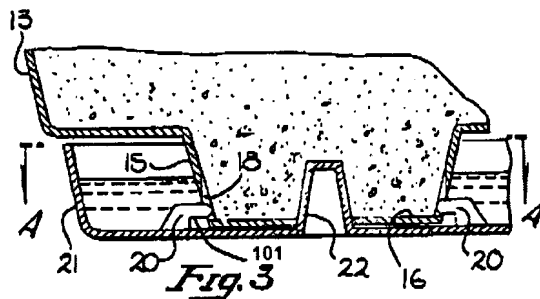
and holes in the wall on the other one of the pot and the coaster. The wording of the claims is confusing. It is not known whether the applicant intends to claim hooks on one or both the pot and the coaster.

### ***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1, 2, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mickelson US Patent 3,949,524.



**Modified Figure 3, US Patent 3,949,524**

10. Regarding claim 1, Mickelson discloses a plant container comprising a pot (11) and a coaster (21), whereby the coaster which is closed at the bottom and serves as a water dish (Mickelson, column 3: lines 16-17) is to be undetachably attached (Mickelson, column 1: lines 59-62) by coupling elements (18, 20) to the pot which is provided with holes (18) on the bottom, wherein the coaster and the pot are mutually

Art Unit: 3643

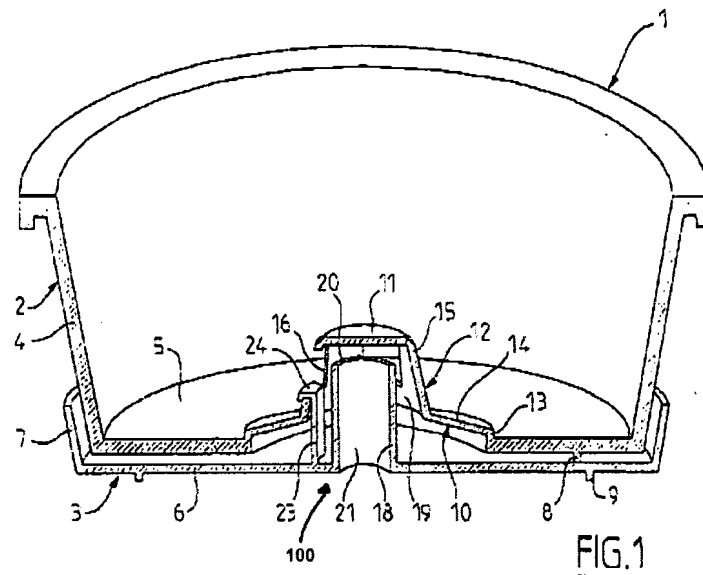
engaged via at least one guide surface (22) tapering in a conical shape and they become engaged with one another by means of the coupling elements via a rotational movement (Mickelson, column 3: lines 6-9). Mickelson does not disclose the device being made of plastic. However, it is well known to those in the art to use plastic as a material for planters. The device being made of plastic would allow the pot and coaster to easily engage each other by allow the coupling elements to elastically deform. Additionally, the examiner also notes that it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

11. Regarding claim 2, Mickelson discloses a device with the limitations of claim 1 further characterized by the guide face (22) is designed on a central dome in the form of a truncated cone.

12. Regarding claim 17, Mickelson discloses a device with the limitations of claim 1 further characterized by the coupling elements (20) are designed in the form of hooks on the coaster and holes (18) in the wall of the pot.

13. Regarding claim 18, Mickelson discloses a device with the limitations of claim 1 wherein the coupling elements are secured by catch elements (Mickelson, column 3: lines 36-39).

14. Claims 3-7, 16, and 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mickelson US Patent 3,949,524 in view of Grigi EP 0 842 599.



**Modified Figure 1, EP 0 842 599**

15. Regarding claim 3, Mickelson discloses a device with the limitations of claim 2 but does not disclose the dome being provided with the coupling elements. However, Grigi teaches a dome (21) provided with coupling elements (23). The coupling elements being on the dome would allow for alignment of the coaster with respect to the pot. The location of the coupling elements would simplify the mating of the elements. If the coupling elements were in different locations throughout the device they would be more difficult to align and would complicate the device. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the position of the coupling elements of Mickelson with the position of the coupling elements of Grigi in order to simplify the mating of the elements.

16. Regarding claim 4, Mickelson discloses a device with the limitations of claim 2 and further discloses the coaster being designed with a dome. Mickelson does not disclose the coaster being having a dome. However, Grigi teaches the pot (1) and

Art Unit: 3643

coaster (3) being designed with a dome in the shape of a truncated cone with the pot and the coaster having abutting guide faces (Grigi, Figure: 1). The pot and coaster both being designed with a dome would allow the domes to be concentrically aligned. The concentric fit of the domes would aid in providing a secure connection between the pot and the coaster. Also, this alignment would ensure that the coaster was directly under the pot, which would aid it in catching water draining from the pot. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the pot of Mickelson with the dome of Grigi to provide a secure, concentric fit between the pot and coaster.

17. Regarding claim 5, Mickelson discloses a device with the limitations of claim 4 and further discloses the coupling elements being designed in the form of hooks on the coaster and holes in the wall of the pot (Mickelson, Figure: 2).

18. Regarding claim 6, Mickelson in view of Grigi discloses a device with the limitations of claim 5. Mickelson further discloses openings (18) provided on an end face of the dome of the pot with hooks engaging in these openings in a coupling engagement with mutual rotation (Mickelson, column 3: lines 6-9). Mickelson does not disclose the hooks protruding upward on an end face of the dome of the coaster. However, Grigi teaches the hooks being designed so that they protrude upward on an end face (100) of the dome of the coaster. It would require more effort to disengage the pot with the coaster with the hooks protruding upward than on an end face. The device would not only require a rotational movement, but also a lifting or thrusting movement for the hooks to clear the openings thereby disengaging the pot from the coaster. This would



ensure that the pot did not become disengaged from the coaster accidentally.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the position of the hooks of Mickelson with the position of the hooks of Grigi to ensure that the pot did not become disengaged from the coaster accidentally.

19. Regarding claim 7, Mickelson in view of Grigi discloses a device with the limitations of claim 6. Mickelson as modified further discloses the hooks having a hook mouth (101) pointing in the radial direction on at least on side.

20. Regarding claim 16, Mickelson discloses a device with the limitations of claim 1 further characterized by the coaster having guide elements (22). Mickelson does not disclose the pot forming a guide face. However, Grigi teaches the pot forming a guide face (12) with a lower wall area whereby the coaster (3) has guide elements (18, 20) which protrude inward toward the guide face within an edge (13) extending around the guide face at a distance. The pot forming a guide face would correspond with guide elements of the coaster. Then, their concentrically fitting parts, forming a secure connection, could join the pot and coaster. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the pot of Mickelson with the guide face of Grigi in order to concentrically join the pot and coaster.

21. Regarding claim 19, Mickelson discloses a device with the limitations of claim 1 but does not disclose the dome protruding upward above an edge of the coaster. However, Grigi teaches the dome protruding upwards above an edge of the coaster (Grigi, Figure: 1). The dome protruding upwards above an edge of the coaster would ensure the dome was deeply located within the pot. This would increase the stability of

Art Unit: 3643

the device, preventing it from tipping over. The dome protruding upwards above an edge of the coaster, and therefore above the joining seam of the pot and coaster would also prevent the pot being torn away from the coaster along the seam. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the dome of the device of Mickelson with the dome extending upwards above an edge of the coaster as taught by Grigi to ensure that the device was not tipped over or torn along the joining seam.

22. Regarding claim 20, Mickelson discloses a device with the limitations of claim 1 but does not disclose a spacer element. However, Grigi teaches a coaster having a spacer element (8) with respect to the pot. Spacers are well known in the art to create a space between a pot and coaster, allowing for the pot to serve as a reservoir or to aid aeration of the roots. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the coaster of Mickelson with the spacer elements as taught by Grigi to aid in the aeration of roots and to act as a reservoir.

23. Claims 8-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mickelson US Patent 3,949,524 in view of Grigi EP 0 842 599 as applied to claims 3-7, 16, and 19-20 above, and further in view of Wells US Patent 1,391,353.

24. Regarding claim 8, Mickelson in view of Grigi discloses a device with the limitations of claim 7 but do not disclose the openings that narrow as in the shape of a keyhole. However, Wells teaches an opening (7) which has a width that narrows in the direction of rotation in the manner of a keyhole (Wells, page 1: lines 85-87). The keyhole shape of the opening would ensure that the opening and the hook did not

Art Unit: 3643

become easily realigned, which would separate the pot and coaster. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the opening of Mickelson as modified by Grigi with the keyhole shape of Wells to complicate the alignment of the opening and hook, thereby reducing the chances of the pot and coaster accidentally separating.

25. Regarding claim 9, Mickelson in view of Grigi and Wells discloses a device with the limitations of claim 8. Mickelson does not disclose an opening partially covered with a roof. However, Grigi teaches an opening (16) partially covered with a roof (11). The roof could be used to limit the distance that the hooks could extend. The hooks could be used to mate the pot and coaster. If a space were desired between the pot and coaster, a roof over the opening would provide a stop for the hooks, which along with other elements could create a space between the pot and coaster. This could also be used to prevent the pot and coaster from fully mating and possibly becoming jammed.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the device of Mickelson, as modified, with the roof of Grigi to provide a stop over the openings of the device.

26. Regarding claim 10, Mickelson in view of Grigi and Wells discloses a device with the limitations of claim 9. Mickelson as modified by Grigi and Wells further discloses the coupling elements being secured by catch elements (Mickelson, column 3: lines 36-39).

27. Regarding claim 11, Mickelson in view of Grigi and Wells discloses a device with the limitations of claim 10. Mickelson does not disclose the dome protruding upwards above an edge of the coaster. Grigi teaches the dome protruding upwards above an

Art Unit: 3643

edge of the coaster (Grigi, Figure: 1). The dome protruding upwards above an edge of the coaster would ensure the dome was deeply located within the pot. This would increase the stability of the device, preventing it from tipping over. The dome protruding upwards above an edge of the coaster, and therefore above the joining seam of the pot and coaster would also prevent the pot being torn away from the coaster along the seam. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the dome of the device of Mickelson, as modified, with the dome extending upwards above an edge of the coaster as taught by Grigi to ensure that the device was not tipped over or torn along the joining seam.

28. Regarding claim 12, Mickelson in view of Grigi and Wells discloses a device with the limitations of claim 11. Mickelson does not disclose the coaster provided with a spacer. However, Grigi teaches the coaster provided with a spacer (8) element with respect to the pot. Spacers are well known in the art to create space between pots and coasters, allowing the space to act as a reservoir for water or air. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the device of Mickelson, as modified, with spacers of Grigi to provide a reservoir and aeration for the pot.

29. Claims 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mickelson US Patent 3,949,524 in view of Grigi EP 0 842 599 and Wells US Patent 1,391,353 as applied to claims 8-12 above, and further in view of Kay et al US Patent 4,315,382.

30. Regarding claims 13 and 14, Mickelson in view of Grigi and Wells discloses a device with the limitations of claim 12 but do not disclose the spacer element being a ring or including a row of interrupted ring sections. However, Kay teaches the spacer element being designed in an interrupted ring shape in the coaster (Kay, Figure: 3), as is known in the art. The spacer being in the shape of a ring or interrupted ring would provide spacers to a large area of the pot, ensuring that the space was uniform. If the spacer was not evenly distributed the position of the pot within the coaster would be tilted, which would decrease the stability of the device. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the device of Mickelson in view of Grigi and Wells with the spacer in the shape of an interrupted ring of Kay to ensure the stability of the device.

31. Regarding claim 15, Mickelson in view of Grigi, Wells and Kay discloses a device with the limitations of claim 13. Kay teaches the spacer element including an interrupted hollow rib (Kay, Figures: 3, 4), with its hollow space being subdivided by at least one web (54). The hollow rib would be formed by molding, a process well known in the art and also taught by Kay (column 4: lines 41-44), to create pots and coasters. The manufacture of the device by molding would allow a large number of identical devices quickly and inexpensively. The hollow space of the rib being subdivided by a web is also well known in the art. The webs are used as additional spacers, or to prevent the devices from becoming locked together when stacked. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to make the rib of

Art Unit: 3643

Kay hollow and to modify it with a web to prevent the devices from becoming locked together when stacked, as is known in the art.

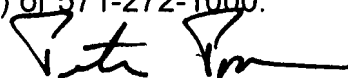
### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristen C. Hayes whose telephone number is 571-270-3093. The examiner can normally be reached on Monday-Thursday, 7:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571)272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KCH  
16 October 2007



Peter Poon  
Supervisory Patent Examiner  
Art Unit 3643

10/25/07